

## 1 DIRECT EXAMINATION

2 BY MS. CORNWALL:

3 Q. Good afternoon, Mr. Baliunas. We have  
4 spoken on the telephone, but this is the first time  
5 we've met in person; right?

6 A. Right.

7 Q. And were you at one time employed by the  
8 Massachusetts State Police?

9 A. Yes, I was.

10 Q. Were you a fingerprint examiner?

11 A. Yes.

12 Q. I'm going to ask you some questions just  
13 to establish your background for the state police  
14 briefly. When did you graduate from the police academy?

15 A. 1956.

16 Q. And did you go straight to the state  
17 police after that?

18 A. Yes.

19 Q. And when did you become a print examiner?

20 A. The year?

21 Q. Approximately the year?

22 A. Maybe '72.

23 Q. What sort of work --

24 A. I would say 1972. I was in the lab for a

1 Q. And that would be you; right?

2 A. Yes.

3 Q. SP Holden is state police Holden  
4 barracks?

5 A. Yes.

6 Q. And you don't have any specific  
7 recollection of calling Officer Pugh to ask for  
8 directions to this crime scene in May of 1980?

9 A. No, I don't recall.

10 Q. It's 27 years ago?

11 A. Right, oh.

12 Q. Almost to the day?

13 A. Yeah.

14 Q. But certainly you calling for directions  
15 to find a crime scene is consistent with how you would  
16 have approached responding to a crime scene?

17 A. Mm-hmm, yes.

18 Q. Okay. And, in fact, you did arrive at  
19 that crime scene on the day of the murder; right?

20 A. Yes.

21 Q. Now please take a look at what we've  
22 marked as Exhibit 2, which is this document. Take a  
23 moment to page through it so you'll see what's there.  
24 While you do that I'll just put on the record that

1       Exhibit 2 consists of 11 pages. The first two pages  
2       appear to be a handwritten list of names. Do you see  
3       that, the first two pages?

4           A.     This one and this one?

5           Q.     Yes.

6           A.     Yeah.

7           Q.     Is that your handwriting?

8           A.     Gee, I don't know. I don't think so.

9           Q.     Okay. Well, I will represent to you that  
10       we received these documents from the state police  
11       altogether. Turn to the third page of this report, of  
12       this exhibit, yes, the typewritten sheet. This is a  
13       photography and fingerprint section report form; right?

14           A.     Mm-hmm, yes.

15           Q.     Thank you. Your name is typed in at the  
16       bottom --

17           A.     Right.

18           Q.     -- as the reporting officer. If you go  
19       to the top left, the date on this report is 5/21 of '80;  
20       right?

21           A.     Correct.

22           Q.     That's the same date as the murder. The  
23       type of case; in fact, it's hard to make out, but murder  
24       and robbery?

1 A. That's what it looks like.

2 Q. In Ayer, on the next line down; right?

3 A. Mm-hmm.

4 Q. Now, this is the form of a report that it  
5 was your practice to fill out when you responded to a  
6 crime scene; right?

7 A. Right.

8 Q. And this was the report that you actually  
9 filled out in this case?

10 A. Yes.

11 Q. Now, on the fifth line down from the top  
12 under investigators it's written in Lieutenant Arthur  
13 Boisseau, Chief Adamson, and Officer Decot, all of Ayer  
14 PD. Do you see that?

15 A. Mm-hmm, right.

16 Q. And also on the line above it says, hard  
17 to make out, lieutenant someone, Trooper Keene,  
18 something DA, and Lieutenant Dwyer.

19 A. Yeah, Lieutenant Dwyer.

20 Q. Those would have been the officers at the  
21 scene with you?

22 A. And I guess the other fellows are for the  
23 Ayer PD; right.

24 Q. The Boisseau, Adamson and Decot.

1 A. Right, yeah.

2 Q. -- how many, if any, latent fingerprints  
3 you found at the scene?

4 A. Yeah.

5 Q. And you wrote in five?

6 A. Five.

7 Q. And then the next line says, Location of  
8 prints?

9 A. Yeah.

10 Q. And you typed in, Three on dining room,  
11 gets cut off there, maybe table. I'm not sure what the  
12 last word is. Do you see that?

13 A. Yeah, could be, yeah.

14 Q. One on faucet?

15 A. Yes.

16 Q. One on Ballantine twelve ounce can?

17 A. Right.

18 Q. Based on your practice does this indicate  
19 to you that you, in fact, lifted five latent prints from  
20 this crime scene?

21 A. I would presume I did.

22 Q. That's what this would mean to you based  
23 on your practice?

24 A. Mm-hmm.

1 Holden lab then?

2 A. Yes.

3 Q. And you were working there for how long?

4 A. Until I retired in '82.

5 Q. So approximately '77 to '82 you were

6 doing print work in the Holden lab for the state police?

7 A. Yeah, I would say something, those years.

8 Q. Do you remember when in '82 you retired?

9 A. November 12th.

10 Q. You know exactly when it was.

11 A. And it was just like that's it. It's  
12 over. You're off the roster. You're off the payroll.

13 You can sit at a desk, but you don't get paid.

14 Q. So you might as well move on?

15 A. Right, yeah.

16 Q. Thank you. I'm clear on that now. So  
17 we've gone through the practice of collecting the  
18 latent, creating the slide, identifying the relevant  
19 information on the slide, going back to the barracks,  
20 photographing the slide to make an enlargement. When  
21 you do that you generate a negative, right, a  
22 photographic negative?

23 A. Yeah, yes.

24 Q. And then --

1 sink?

2 A. You're asking if there was a bloody towel  
3 in the kitchen sink?

4 Q. That's my question.

5 A. I don't recall.

6 Q. Do you remember if the faucet was running  
7 or not running when you arrived?

8 A. I don't remember.

9 Q. You were not the first officer at the  
10 scene by any stretch?

11 A. No, no.

12 Q. Now, we were taking a look at your report  
13 from this crime scene. Was it your practice to keep a  
14 copy of this in your file at the Holden barracks?

15 A. Oh, yes.

16 Q. Was it also your practice to send a copy  
17 to the investigators you had met with at the scene?

18 A. Yes.

19 Q. And that would include --

20 A. Well, no, not all the investigators, but  
21 it would be the person who's in charge of the  
22 investigation at the Ayer PD and --

23 Q. Chief Adamson according to your report?

24 A. Yeah, and I suppose somebody in the

1 district attorney's office. If they desired a copy one  
2 was filed by me or the Ayer PD.

3 Q. That would have been your practice to  
4 make sure the chief investigator at the scene for the  
5 local police got a copy and the DA's office if they  
6 wanted one either from you or the local police?

7 A. Correct.

8 Q. With a copy that you would keep in your  
9 own file?

10 A. Yes.

11 Q. Was it also --

12 A. Now, this is what I've been looking for.  
13 I keep this, you know, I make -- because at that time  
14 there were no copy machines or anything, we used carbon  
15 paper. You don't remember those days.

16 Q. I do remember those days.

17 A. You had to stack them, make sure they're  
18 all in line, and put them in the typewriter, you know.  
19 That's why some of those came out poor. Maybe they got  
20 the third copy and maybe that's why it's not so  
21 readable.

22 Q. So you mentioned that you had a practice  
23 of keeping copies, carbon copies, of your own reports?

24 A. Right.

1 A. Yes, yes.

2 Q. And if there were an arrest and you  
3 compared the suspect's fingerprints to latents at a  
4 crime scene and you found there was an exclusion,  
5 because you were trained that that information was  
6 helpful to the defendant, you made sure that that  
7 information was documented and referred back to the Ayer  
8 police?

9 A. Yes.

10 MR. TEHAN: Objection.

11 Q. As you sit here today do you remember  
12 whether you ever generated any other written reports in  
13 this case?

14 A. No.

15 Q. You don't remember?

16 A. (Shaking head).

17 Q. Right?

18 A. Right.

19 Q. Okay, and as you sit here today you never  
20 made any match between any suspect prints and the  
21 latents from this crime scene?

22 A. No, I haven't.

23 Q. In fact, you never testified at the  
24 trial. No one ever asked you to testify; right?

1 that?

2 A. Yes.

3 Q. So would you have expected as a matter of  
4 standard procedure that if Mr. Waters were arrested for  
5 the murder of Katherine Brow and fingerprinted his  
6 prints would have been sent to you so that you could  
7 compare them to the latents from the scene?

8 MR. TEHAN: Objection.

9 A. I would have expected something, yes.

10 Q. Now, as you sit here today do you have  
11 any memory of whether anyone ever sent you his prints?

12 A. No, I don't recall.

13 Q. But if they had you certainly would have  
14 reported the results of the comparison that you made?  
15 Withdrawn.

16 A. Yes.

17 Q. If someone had sent you, if Ayer had sent  
18 you Kenny Waters' fingerprints, you would have compared  
19 them to the latents at the crime scene?

20 A. Yes, but I think it was through his  
21 admission --

22 Q. Let's just focus on the fingerprints,  
23 okay?

24 A. All right.

1 Q. His name was on that report, yes. You're  
2 aware that there was an Ayer police officer named Decot  
3 who responded to the scene?

4                   A.        Yes.  How I know him is because I saw his  
5 name on the report, but I don't recall meeting him or  
6 talking with him.  But maybe I did.  I don't know.

7 Q. You just don't remember after so long?

8           A.       I would assume that I probably did, you  
9 know.

10 Q. Sure. So do you recognize this  
11 handwritten list of names, which we received along with  
12 your report and the copies of the slides of the latents,  
13 do you recognize that as your handwriting?

14                   A.     This is my handwriting? I don't think  
15 it's mine.

16 Q. Why not?

17           A.       I don't know.  I don't make my letters  
18        like some letters are in here.  I don't make other  
19        letters like -- they're not mine and I don't know who  
20        made this.

21 Q. Well, was anyone else in the Holden  
22 barracks doing any work on any prints from this case?

23 A. No, I don't think so.

8. Was it the practice in the Holden

1 barracks that once you took latents from a crime scene  
2 you would be the person to compare them with prints that  
3 were submitted to you by the police?

4 A. You know, maybe they could have done  
5 something after I had retired, too. Maybe somebody else  
6 checked it. Maybe that's where the list came from.

7 Q. Well.

8 A. Or maybe this is Adamson's list or  
9 Decot's. No, he's got Decot's name here.

10 Q. As you sit here today you don't know who  
11 wrote this list?

12 A. No.

13 Q. Was it ever your practice at the state  
14 police to keep a list of names of people whose prints  
15 you compared to latents from a crime scene and whether  
16 you included or excluded that?

17 A. Well, not really. If the print card or  
18 whatever was submitted and it wasn't any good, why make  
19 extra work for yourself having a list.

20 Q. Well, a list would keep track of who  
21 you've looked at?

22 A. Well, I would have his card, I would have  
23 his print card and file it away in a drawer.

24 Q. If you weren't asked to return it?

1                   Q.     Okay.  So I will represent to you that on  
2 this list of names are suspects and family members of  
3 the victim, an officer who responded to the scene.  So  
4 given that and given that we received this handwritten  
5 document from the state police along with your report  
6 and the copies of the slides, and given that there was  
7 no other person in the state police barracks working on  
8 this case, would you agree that it's possible that you  
9 wrote this handwritten list of names?

10                  A.    No, that's not my handwriting.

11                  Q.    Well, whose could it be if it was in the  
12 state police file?

13                  A.    Ayer Police Department maybe.

14                  Q.    You just don't know?

15                  A.    Because I, I -- I don't think I would  
16 have possession or a place to get these names.  I  
17 wouldn't have Ms. Brow's family, you know.

18                  Q.    If you were provided elimination prints  
19 from Ms. Brow's family, then you would have the names on  
20 those print cards; right?

21                  A.    I would, but I don't recall getting any  
22 prints on the Brow family.

23                  Q.    Do you recall getting Mr. Hamilton's  
24 prints?

1 protocol such that a check mark next to a name meant a  
2 print had been checked?

3 A. No, no.

4 Q. Now, do you see in the left-hand margin  
5 there's the word Leroy about ten names down?

6 A. Mm-hmm.

7 Q. Yes?

8 A. I can see it.

9 Q. And next to that Kenneth Waters?

10 A. Uh-huh.

11 Q. You do see that?

12 A. I see that.

13 Q. As you sit here today do you know whether  
14 or not you compared Kenneth Waters' prints to somebody  
15 else's?

16 A. No.

17 Q. Let me show you now what's been marked as  
18 Exhibit 3, and I think you referred to this as Chief  
19 Adamson's log; correct?

20 A. Mm-hmm, yes.

21 Q. I'd like to bring you back again to a  
22 note in this log dated 8/8/80, which is the last entry  
23 on what's been marked as Bates B48. Do you see that?

24 A. Yeah.

1 A. Yeah.

2 Q. Do you think you made an incomplete  
3 examination of the prints?

4 A. I don't know.

5 Q. Okay. Just so I'm clear on something,  
6 and I realize that this is Chief Adamson's writing and  
7 not yours, but it says, Corporal Baliunas called to  
8 advise negative on Hamilton and Bean prints. Does  
9 negative in that context as you understood it equate  
10 with having eliminated them as suspects?

11 A. Right.

12 Q. Now, as I understood it in your capacity  
13 as a print examiner you would evaluate and compare  
14 prints at the request of investigating police officers;  
15 correct?

16 A. Right.

17 Q. And there was also a mechanism, was there  
18 not, where a criminal defense counsel could request  
19 comparison of their client's prints to the prints lifted  
20 at the scene; isn't that true?

21 A. True.

22 Q. And how was that done?

23 A. I guess you'd have to go through the lab.

24 Q. Did any defense lawyer for Ken Waters

1 ever ask you to compare his prints to any prints that  
2 you had from the murder scene?

3 A. No.

4 Q. Okay. Of course you would have done so  
5 if he asked you, would you not?

6 A. Right.

7 Q. With what frequency did you speak with  
8 Chief Adamson during this investigation?

9 A. I would say only the times that if he had  
10 a print that he wanted checked out. Other than that I  
11 wouldn't.

12 Q. Did you like him?

13 A. Yeah.

14 Q. Did he seem competent?

15 A. Yeah.

16 Q. Did he ever --

17 MS. CORNWALL: Objection, vague given the  
18 litigation and the position you're taking now.

19 Q. Did he conduct himself in a professional  
20 manner in his dealings with you?

21 A. Yes.

22 Q. And did he at any point indicate to you  
23 any intent whatsoever to frame Kenny Waters for this  
24 murder?